IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2979 OF 2001

Smt. Geeta Shridhar Gadre)
Shramadham, Sahayog Mandir) .. Petitioner.
Marg,Ghantali,Thane-400 602.)

V/s.

1. Brahman Shikshan Mandal)
through its Chairman, Thane)
)
2. Education Officer (Secondary))
Thane Zilla Parishad, Thane.)
)
3. State of Maharashtra) .. Respondents.

Mr.R.S.Apte for the Petitioner.

Mr.B.D.Joshi for the Respondent No.1.

Mr.V.A.Sonpal,Govt.Pleader for the Respondent Nos.2 to 3.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 27th APRIL, 2007.

ORAL JUDGMENT :- (Per R.M.SAVANT,J.)

. By this petition filed under Article 226 of the Constitution of India, the petitioner who was headmistress of a school run by the Respondent No.1 Trust has claimed various reliefs; the sum and substance of which is that the petitioner is claiming payment of arrears of salary and other consequential benefits from the date of her suspension i.e.

10.05.2000 till 30.09.2003, i.e. the date of her retirement. The petitioner is also praying for pension on the said basis.

2. The factual matrix involved in the present petition is stated thus :

. The petitioner was appointed as a teacher in the school run by the Respondent No.1, namely, Maharashtra Vidhyalay on 9th of June, 1969. The petitioner was thereafter promoted as supervisor and assistant headmistress in due course and on 16th July, 1998 the petitioner was promoted as headmistress in the Vartak Nagar Madhyamik Vidhayalay run by the respondent No.1.

3. The petitioner was appointed as Chief Conductor for the S.S.C. examination of March, 1999 for which the said Vartak Nagar School was a centre. As per the practice for the said S.S.C. examination, the answer sheets are assessed in the school itself. It appears that one Shashikant Patil who was appointed as an examiner misplaced a bunch of 27 papers of the said examination. The petitioner immediately took steps on being informed by Shri Patil of the said loss by contacting the S.S.C. Board and also lodged F.I.R with the Vartak Nagar Police Station. Inspite of the best

efforts of the petitioner and the staff of the school the said papers could not be located. It appears that the issue was raised in the Legislative Assembly, wherein a statement came to be made that the concerned teachers of the school would be suspended. Accordingly, a direction came to be issued by the Education Officer, Thane vide letter dated 10.5.2000 to the Management i.e. the Respondent No.1 to suspend the petitioner and the said Shashikant Patil. The Management proposed to hold a departmental enquiry against the petitioner and said Shashikant Patil and accordingly, the petitioner and the said Patil were suspended from 11.05.2000. The petitioner was served with the charge-sheet dated 4.8.2000 and special charge-sheet also came to be served on the petitioner on 6.9.2000. In spite of the cooperation of the petitioner, the said enquiry was not completed within time stipulated under the Maharashtra Employees of Private Schools (Conditions of Service) Rules. The enquiry was ultimately completed on 21.11.2000 and the report was finalized in the said enquiry. The petitioner was exonerated. The petitioner was only issued a warning to be careful in future. After the statutory period of 120 days was over, the petitioner had requested the management to reinstate the petitioner. However, the management vide its letter dated 7.9.2000 communicated to the petitioner that the

issue regarding her suspension has-been referred to the Education Officer for further guidance. The petitioner was also informed that extension of suspension of the petitioner is sought from the Dy. Director. The petitioner thereafter submitted various representations to the respondents, requesting the respondents to permit the petitioner to resume duties after completion of 120 days of suspension.

4. The petitioner on her exoneration in the departmental enquiry again submitted various representations reiterating her request for reinstatement with payment of arrears of salary in accordance with law. The petitioner in response to the said representations, received a communication dated 31.01.2001, asking the petitioner to submit an undertaking, interalia, admitting her guilt. It appears that the petitioner was given the proforma of the undertaking and was asked to submit the undertaking in the same terms, failing which the management threatened the petitioner that serious action will be taken against her. The petitioner, as desired by the management, furnished the undertaking in terms of the enquiry report. However, the management neither accepted the said undertaking nor refused the same; but the fact remains that the petitioner was not allowed to resume

duties. The petitioner ultimately retired on 30th of September, 2003. The petitioner was paid suspension allowance upto August, 2002. The petitioner, post retirement, was paid provisional pension upto March, 2004 and thereafter, it is her case that she has not been paid the pension also. The above petition came to be filed in the year 2001; pending the petition the petitioner had approached the education officer for payment of the arrears of salary. The Education Officer vide his letter dated 21.07.2004 refused to direct the management to pay arrears of salary and payment of wages on the ground that the petitioner did not resume duties in the school. However, the Education Officer has clarified that since the issue is subjudice in the above petition, the parties would be bound by the decision of this court in the above petition.

5. On behalf of the Education Authorities, an affidavit has been filed by one V.S. Mhatre, Dy. Education Officer (Secondary) Education Department, Zilla Parishad Thane. What is significant to note that in para -6 of the said affidavit, it has been stated that vide letter No. TZP/Edn/W.S.-8/2001, dated 04.04.2001, the Education Officer, (Secondary) has given permission to the respondent No.1 Management for reinstatement of the petitioner in service.

6. An affidavit has also been filed on behalf of the Respondent No.1 by one Mr. N.S. Joshi, the Secretary of the respondent No.1 Management. The sum and substance of the said affidavit is that the petitioner has conveniently avoided to give undertaking as contemplated in the enquiry committee and therefore, she is not entitled to reinstatement. An affidavit in rejoinder has been filed by the petitioner in which it has been stated by the petitioner that in spite of the letter dated 4.4.2006 of the Education Officer asking the management to reinstate her, the management has not abided by the said decision and has sought to reagitate the issues already concluded by the Enquiry Committee. The said affidavit further states that since September, 2002 the petitioner has not received even the meagre subsistence allowance which was till then paid to the petitioner. It is also further averred that in spite of number of letters addressed personally as well as through the Advocate, requesting the management to reinstate the petitioner and pay her the dues, the same has not been done.

7. We have heard the learned counsel for the petitioner Shri R.S. Apte, the learned counsel for the Respondent No. 1 Shri B.D.Joshi and the learned AGP for

the respondent No.3. On behalf of the petitioner, the learned counsel Shri Apte submitted that in view of Rule 35 (3) of the Maharashtra Employees of the Private School Rules, 1981, the suspension of the petitioner beyond the period of 120 days is impermissible. The learned counsel took us through the said relevant rules, namely, 33,34 and 35 of the said Rules which interalia, provide for the procedure for inflicting a major penalty, payment of suspension allowance, and conditions of suspension. Sub-rule 2 of Rule 35 is relevant and would be referred to in the latter part of this judgement.

8. Relying upon the said Rule 35(2), the learned counsel for the petitioner submitted that the suspension beyond the period of four months can only be with the prior permission of the appropriate authority. In absence of such prior permission, the suspension beyond four months was unsustainable. The learned counsel further submitted that in any event, after the Enquiry Committee had submitted its report on 21st November, 2000 and had exonerated the petitioner, the suspension could not have been continued and the petitioner ought to have been reinstated on account of her exoneration. The learned counsel further submitted that the petitioner had also furnished an undertaking to the

management as desired by it but the management was desirous that the petitioner should give an undertaking as per its whims. The learned counsel further submitted that since there was no justification for not reinstating the petitioner, the petitioner would be entitled to all the arrears of the salary etc. from the date of the suspension i.e. 11.05.2000 till 30th of September, 2004 and would also be entitled to regular pension on the said basis.

9. On behalf of the respondents, the B.D.Joshi, the learned counsel submitted that the petitioner was suspended pending enquiry as the petitioner had proved to be negligent and lax as a Chief Conductor during the S.S.C. examination of the year 1999. The learned counsel further submitted that the petitioner was suspended on account of the direction issued by the Educational Officer vide letter dated 10.05.2000 and therefore, the prior approval to the suspension of the petitioner is deemed to have been given by the Education Officer. The learned counsel, further, submitted that the management had addressed a letter to the Education Officer (secondary) Zilla Parishad, Thane for grant of approval for continued suspension of the petitioner beyond a period of four months. The learned counsel drew our attention to the said letter which is part of

the paper book of the above writ petition. The learned counsel further submitted that the petitioner was not entitled to be reinstated though she has been exonerated as the petitioner was not ready and willing to give an undertaking as desired by the management. The petitioner was sent a proforma of the undertaking desired by the management but the petitioner had failed to give the undertaking in the said terms.

10. We have given our anxious consideration to the rival contentions of the parties. The crux of the issue that arises for our consideration is as to whether the petitioner could be continued under suspension beyond a period of four months as contemplated in Rule 35 of the said Rules and whether the petitioner was entitled to be reinstated on her exoneration by the enquiry committee. It would be relevant to extract Rule 35 of the Maharashtra Employees of Private School Rules, 1981. The said rule 35(1) and (2), which are relevant for the purpose of the present petition are extracted hereinbelow. Rule 35(1)(2) :

> 35(1): In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

11. What emerges from the reading of the said rule is that the management can suspend an employee only with the prior approval of the appropriate authority mentioned in the Rule 35 and that the period of suspension shall not exceed four months except with the prior permission of the said appropriate authority. In sofar as sub-rule (1) is concerned, we find no difficulty since the petitioner was suspended on the direction of the Education Officer as contained in the letter dated 10.5.2000 and therefore, it can be said that an approval was there to the petitioner's suspension. However, insofar as the continuation of the suspension of the petitioner beyond four months is concerned, we do not find any material produced by the respondent No.1 to show that the permission was obtained. As regards, the continued suspension of the petitioner beyond the period of four months, the learned counsel for the petitioner, on being queried by us, drew our attention to the letter seeking permission to continue the suspension beyond four months but has candidly stated that no order has been received by the

management pursuant to the said letter. Therefore, the accepted position is that no permission has been obtained by the management for the petitioner's suspension beyond the period of four months, therfore, the petitioner's continued suspension after the initial period of four months was in violation of Rule 35(3) and therefore, illegal.

12. It is significant to note that after the completion of the enquiry and after the submission of the report on 21.11.2000, which exonerated the petitioner, the petitioner was not allowed to join duties inspite of the repeated requests made to the management by the petitioner, which correspondence is on record. The petitioner even prepared an undertaking in terms of the report of the enquiry committee as desired by the management so as not to fall foul of the management. Inspite of the same, the petitioner was not allowed to join duties. It is pertinent to note that Assistant Teacher Shashikant Patil, who was responsible for the loss of the exam papers, was necessited by revocation of suggestion on 26.12.2000 but the petitioner was kept away from her job. There is no justification to continue the petitioner under suspension after enquiry was completed and the petitioner was exonerated. The petitioner was also

ready to give undertaking as desired by the management. If the management was of the view that the petitioner was in any way disregarding the bonafide orders of the management in furnishing the undertaking, the management could have proceeded against the petitioner departmentaly if it so desired or if it was so entitled. However, the management kept the issue in limbo and in the meantime, the petitioner superannuated on 30th September, 2003. The learned counsel for the management could not point out any letter addressed by the management after the enquiry was completed and the petitioner exonerated, asking the petitioner to rejoin duties. The letters addressed by the management are only to the extent of asking the petitioner to give an undertaking. In contrast the petitioner has addresed number of letters, pleading with the Management to reinstate her. It is pertinent to note that the Management had also disregarded the orders of the Education Officer dated 4.4.2001. The petitioner, therefore, cannot be blamed if the respondent No.1 has not allowed her to join duties. Consequently, the petitioner would be entitled to arrears of salary on expiry of four months of the petitioner’s suspension from 10th of May, 2000. The petitioner would also be entitled to regular pension, calculated on the said basis. In that view of the matter, the petition would

have to be allowed by issuing the following directions against the respondents.

i. The petitioner would be entitled to all arrears of pay etc., on the completion of 120 days from 10.05.2000 i.e. her date of suspension till her date of retirement i.e. 30th September, 2003.

ii. The petitioner would also be entitled to arrears of pension, calculated on the basis of the regular pay that she would be entitled to and directed to be paid in terms of clause (1) above.

iii. The exercise of calculating the arrears in terms of clause (i) and (ii) above and payment to be made, to be carried out within two months from date. In the event payment is not made in terms of these directions, the arrears due would carry 8% interest from the end of two months till payment.

iv. The petitioner would thereafter be entitled to payment of regular pension as per her entitlement.

13. Rule is accordingly made absolute in the aforesaid terms with parties left to bear their respective costs.

14. Learned counsel for the Respondent No.1 seeks stay of the order. In our view, no case is made out for stay. The application for stay is rejected.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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